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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: [Redacted] Office: Vermont Service Center Date:

JUN 18 2001

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in business. The petitioner seeks employment as a "financial writer and high tech/telecom analyst." The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The Administrative Appeals Office ("AAO," also called "AAU" in the regulations), acting on behalf of the Associate Commissioner, affirmed the denial and dismissed the appeal.

The initial AAO decision cited the statutory and regulatory language relevant to the classification sought. We need not repeat the full statutory and regulatory language in this decision, although we shall cite relevant portions as needed.

When he initially filed the appeal, the petitioner stated that he would submit additional evidence within 100 days. On motion, the petitioner argues that the AAU failed to consider this supplementary evidence. The appellate decision indicates that "no additional documentation has been received," but on motion the petitioner submits postal receipts confirming the delivery of supplemental documentation.

The record shows that, subsequent to filing his initial appeal on September 18, 1998, the petitioner submitted further evidence on five separate occasions before the AAU dismissed the appeal. These submissions include cover letters dated November 21, 1998; February 23, 1999; May 7, 1999; May 25, 1999; and June 25, 1999.

The regulation at 8 C.F.R. 103.3(a)(2)(vii) states "[t]he affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one." Setting aside the petitioner's failure to show good cause when he requested the extension, only the earliest of the above submissions falls within the 100-day period which the petitioner had requested.

The petitioner had not requested (let alone been granted) additional time to submit the later submissions, nor had he shown good cause to warrant repeated extensions. The regulations do not

state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication.

The above-cited regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion. By filing a motion, the petitioner does not guarantee himself an open-ended period in which to repeatedly supplement the record with evidence that plainly did not exist at the time the motion (let alone the underlying petition) was filed. Otherwise, a petitioner could indefinitely delay the adjudication of the motion, simply by repeatedly submitting new documents and requesting still more time to prepare still more submissions.

We note that most of the documents submitted after the filing of the appeal did not exist at the time the petition was filed. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements.

I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and [REDACTED] 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Pursuant to these precedent decisions, the petitioner cannot simply continue to add more and more documentation to an already-adjudicated petition, in hopes of eventually rendering the petition approvable. The petitioner has supplemented the record at least five times between the filing of the appeal and its dismissal, and at least five more times since the filing of the subsequent motion.

In accordance with the above, for the purposes of this proceeding, we shall consider only the documentation submitted with the petitioner's motion on October 4, 1999. Because the petitioner may submit new evidence with a motion to reopen, we will consider the petitioner's documentation submitted during the first half of 1999 to constitute such new evidence. We reject, however, the argument that the AAO erred in failing to consider this evidence during the initial appellate adjudication.

On motion, the petitioner submits several books, articles, and pamphlets that he has written. There is no evidence that any of these publications existed at the time he filed the petition on April 7, 1998, and therefore they cannot establish that the petitioner was already eligible at that time. Furthermore, the fact of authorship is of secondary importance to the documented impact of the petitioner's writings. If the petitioner's writings have not earned him national or international acclaim, then the

sheer quantity of the petitioner's published writings is without consequence.

8 C.F.R. 204.5(h)(3)(vi) indicates that an alien can establish sustained acclaim through authorship of scholarly articles in the field, in professional or major trade publications or other major media. While such publications can be a means through which an individual earns acclaim, it does not follow that the very act of publication bestows such acclaim. We must take into account the reaction of the petitioner's field, at a national or international level. Also, we cannot ignore that the petitioner has stated his occupation as "financial writer," in which case publication is an integral element of his work, rather than evidence of extraordinary ability. While the petitioner has written for some major publications, these articles are not scholarly in nature as is the case with, for instance, articles in research publications such as [REDACTED] or [REDACTED]. Journalistic reportage is not inherently scholarly in nature.

The petitioner had previously claimed to have satisfied 8 C.F.R. 204.5(h)(3)(iv) by acting as a judge of the work of others, specifically as an editor. The AAO concluded that all editors judge the work of writers, yet it is absurd to contend that all editors are at the top of the field. The petitioner, on motion, observes that in addition to his editing duties, he reviewed manuscripts submitted for publication to the Financial Times Media & Telecoms. The evidence does suggest that the petitioner performed such duties to an extent that would satisfy the regulatory criterion. This factor, however, is not sufficient to render the petition approvable or overcome the remainder of the AAU's findings.

Two letters accompany the motion. [REDACTED] chief executive of Lafferty Publications, devotes most of his comments to the petitioner's activities after the April 1998 filing date. He also states that "[u]nder [the petitioner's] editorship, the newsletter, Digital Media Investor, became a leading UK publication on the Internet and digital TV industries." The record shows that [REDACTED] is a publication of Financial Times Media & Telecoms, one of the United Kingdom's major financial publishing houses, and therefore it is not clear to what extent the newsletter's success depended on the petitioner's involvement rather than the backing of a major publisher.

Professor [REDACTED] chairman of [REDACTED] Holdings, praises the petitioner's work after the filing date, and states "[u]nder [the petitioner's] editorship, this newsletter [REDACTED] became a leading UK publication on the computer security industry." We note the extremely similar wording between this passage and the above passage from Mr. Brooks' letter.

Both of these witnesses have worked directly with the petitioner; their statements do not establish that the petitioner has earned sustained acclaim at the national or international level, which necessarily must extend beyond the petitioner's own collaborators and co-workers.

To establish eligibility for this highly restrictive visa classification, the petitioner must show not only that he has worked as a writer and editor for major financial publishing companies, but that he is widely acknowledged (at a national or international) as one of the top figures in his field, and was so acknowledged in April 1998 when he filed the visa petition. The evidence submitted on motion concerns, for the most part, the petitioner's activities in late 1998, 1999, and afterwards. Those documents pertaining to the proper time period help to establish the petitioner's work as a judge of the work of others but do not present an overall picture that shows the petitioner as one of the highest-ranking figures in his field.

If the petitioner is convinced that his subsequent activities can demonstrate or establish the required acclaim, the appropriate context for evidence of those activities is a new visa petition, with a later filing date which can encompass that evidence. Even so, we make no representation that a new petition is certain, or highly likely, to be approved. The petitioner appears to have been submitting his new publications immediately upon their release, when it is plainly too early to tell the impact of the publications upon his field. This evidence establishes that the petitioner is a prolific writer, but amount of output is not a reliable gauge of ability or acclaim.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of September 17, 1999 is affirmed. The petition is denied.